trust being void in law, the fund has to be dealt with as upon an intestacy in contradiction of the purpose named.

There remain certain subordinate questions. It is unfortunate that to bring Shanmugan into the suit, recourse was had to the misconceived procedure of a third party notice. The position was that if as between the appellant and Shanmugan the arrangements of the 16th July, 1915, and the 7th January, 1924, stand, the appellant has an equitable defence to the extent of the sum to which Shanmugan will be beneficially entitled out of the money for which the appellant is accountable. If, on the other hand, those arrangements are avoided for fraud, there is an equitable defence only to the extent of the $18,000 which Shanmugan received under the latter arrangement. This latter result has been, in fact, achieved by the order of the Court made by consent of the parties though not relevant to the pleadings. It seems, however, to their Lordships that the issue of fraud on which it depends, has never been regularly tried. It was only introduced by the pleading delivered by the third-party and he was discharged from the action without being called upon to support his allegations, on the ground that the third-party procedure was inapplicable. The issue is, however, relevantly raised in the action now pending in India, and, under the circumstances, the proper order in the present suit is that execution (except for costs and the amount of any expenses properly incurred by the plaintiff and his predecessor as administrators *de bonis non*), be stayed until the suit in India has been determined. The widow being dead and the daughters now apparently married, it appears *prima facie* that Shanmugan is the only person interested. The order must provide that the stay will become perpetual failing due prosecution of the litigation in India and there must be liberty to apply.

With regard to the enquiry directed by the order of the Court of Appeal to ascertain the highest value reached by a share in the L.W.H., Ltd., it appears from the written judgments delivered, that it was left to be determined upon further consideration before a single judge whether the respondent could elect to take the value of the shares instead of the shares themselves and how that value was to be estimated. Their Lordships understand this question has been determined on further consideration and on appeal by the Court of Appeal. These orders are not before their Lordships in this appeal.

Their Lordships will duly advise His Majesty that the appeal be dismissed subject to a variation of the order of the Court of Appeal by the introduction of a stay of execution as already described.

There will be no order as to the costs of the appeal.

Judgment of Court of Appeal varied accordingly.

Solicitors for the Appellant—*Lowe & Co.*, agents for *Rodyk & Davidson*, Singapore.

Solicitors for the Respondent—*Peacock & Goddard*, agents for *Braddell Brothers*, Singapore.

[APPELLATE CIVIL JURISDICTION]

MILLS, J.

December 22, 1934.

R. PONNUSAMY v. LIM KEE LAM.

[SINGAPORE DISTRICT COURT APPEAL No. 11 of 1934]

Civil Procedure Code, S. 1239—District Court Appeal—Jurisdiction of single Judge to dismiss such an appeal in default of filing of copies of the record.

A Single Judge of the Supreme Court has no jurisdiction to dismiss an appeal from the District Court even though the Appellant has not complied with the requirements of S. 1239 of the Civil Procedure Code, as such an order of dismissal involves the decision of the appeal within the meaning of S. 1150 (1) of the Code.

MOTION

The facts and arguments sufficiently appear from the Judgment.

Shunmugam for Plaintiff (Respondent)

Fung for the Defendant (Appellant)

Cur. Ad. Vult.

MILLS, J.—The appellant having failed to file his two copies within the time prescribed by Section 1239 (1) of the Civil Procedure Code, the respondent now moves the Supreme Court to dismiss the appeal.

Counsel for the respondent argued that under Section 1239 (3) "the appeal shall be dismissed" and that a Judge of the Supreme Court sitting in open Court has jurisdiction to dismiss it.

Counsel for the respondent argued that the appeal ought to be put in the list, called on, and dismissed by the Court of Appeal in the ordinary way.

No authority was cited in support of either argument.

In my opinion, both contentions are wrong.

As to the respondent's contention: the only possible inference to be drawn from Section 1239 (4), in my opinion, is that until the copies for the use of the Judges have been filed, the appeal is not to be put in the list: so that, in the present instance, the case would never come before the Court of Appeal in the ordinary way.

As to the appellant's contention: there are three reasons why I feel compelled to hold that

a single Judge of the Supreme Court sitting in open Court has no jurisdiction to dismiss the appeal:

(1) the order of dismissal is a final order determining the appeal in favour of the respondent: I can find no provision of law which states, expressly or impliedly, that such an order can be made by any authority other than the authority which can make a final order determining the appeal in favour of the appellant: and there is no doubt that the latter order can be made only by the Court of Appeal;

(2) the order of dismissal involves the decision of the appeal within the meaning of Section 1150 (1) and therefore is excluded from the class of directions which may be made by a single Judge;

(3) if no inference can be drawn from the Code or any other law now in force, as to the authority which can dismiss the appeal under Section 1239 (3), then by Section 3, the procedure and practice for the time being in force in the Supreme Court of Judicature in England shall, as near as may be, be followed and adopted: in England, the procedure and practice is to apply by motion to the Appellate Court to dismiss the appeal for want of prosecution (cf. e.g. *Charlton* v. *Charlton*, 16 C.D. p. 273).

My conclusion is that in the present case the respondent should have applied by motion to the Court of Appeal to dismiss the appeal for want of prosecution.

Counsel have agreed that the costs of the present application shall follow the event.

The respondent has failed in his present application; his motion must therefore be dismissed with costs.

Motion dismissed.

Solicitor for Respondent—*S. Shunmugam.*

Solicitor for Appellant—*S. Fung.*

[ORIGINAL CIVIL JURISDICTION]

WHITLEY, J.

January 23, 1935.

Re H. DANIEL.

[PENANG BANKRUPTCY No. 15 of 1934.]

Ordinance No. 44 (Bankruptcy) Section 47 —Vesting of Property of Bankrupt.

The Municipal Commissioners of Georgetown, Penang, have established a Provident Fund for their employees and under the rules of that Fund the Commissioners periodically deduct 10% of the salary due to each member and pay such amount to the fund. This is known as the Contributions side of the Fund. The Commissioners also themselves contribute and pay to the Fund half yearly a sum equal in amount to the aggregate of the members' contribution during that half year. This is known as the Donations side of the fund.

Bankruptcy proceedings were taken against a member of the Georgetown Municipal Commissioners Provident Fund. Receiving and Adjudication Orders were made against him. Subsequently the Municipality dispensed with his services. On Motion made to the Court on behalf of the Petitioning Creditor.

Held that the Official Assignee could claim the Contribuions side of the fund and that such part of the fund on the member's bankruptcy vested in the Official Assignee upon the member ceasing to be an employee of the Municipal Commissioners.

Motion.

An application was made by way of Motion on behalf of the Petitioning Creditor for an Order that the Official Assignee do declare and distribute a subsequent dividend in this Bankruptcy.

The facts and arguments are sufficiently shown in the Judgment.

Lim Cheng Ean for the Petitioning Creditor.

E. N. Taylor, Official Assignee.

Cur. Ad. Vult.

WHITLEY, J.—This was a motion on behalf of the petitioning creditor for an order that the Official Assignee do declare and distribute a subsequent dividend in the bankruptcy.

The material facts are short and are all admitted. The bankrupt was employed by the Penang Municipality. Receiving and adjudication orders were made against him on 20th April 1934 and his services were dispensed with by the Municipality at the end of that month. The amount standing to his credit in the Municipal Provident Fund was $3,391.74 which sum was duly paid out to him. The Official Assignee took the view that the whole of this sum was protected from seizure by section 19(2) of Ordinance No. 135 (Municipal) and consequently did not vest in the Official Assignee. The bankrupt offered to furnish from this sum enough money to pay a composition of 50%. Proofs made by the eleven creditors for sums amounting to $1,366.98 were admitted. The two creditors who attended the first meeting of creditors declined the composition offered. The bankrupt thereupon paid $683 to the Official Assignee unconditionally and a dividend of 50% was declared and paid. For some reason which is not quite clear to me the actual amount handed to the Official Assignee as appears from the latter's statement dated 18th August 1934 was $1,350 and the statement shows a balance remaining in the hands of the Official Assignee of $536.96 after payment of costs and dividend. Counsel for the petitioning creditor contended that that balance must also be available for dividend. The Official Assignee took